IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

**WRIT PETITIOIN NO.1547 OF 2003**
**WITH**
**WRIT PETITION NO. 2409 OF 2003**

| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders | Court's or Judge's orders |
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Mr. R.S. Khadapkar for the petitioners
Mr. A.V.Avhad for the respondents.

CORAM : ANOOP V. MOHTA, J.

**DATE : 28.11.2005**

. These are the two writ petitions filed by the plaintiffs, as an application for restoration under order 9 of Civil Procedure Code were rejected, as the suits were dismissed on 13/1/2000 for default. In Misc. Civil Appeals under order 47 (1) of C.P.C. the District Judge also, after considering the rival contentions, by impugned common order, rejected both the appeals with cost. In the result both the suits for injunction

as filed by the plaintiffs against original defendant, respondent herein, were dismissed.

2. Heard the learned Counsel for both the parties. Undisputed fact on record which can be borne out from the rozanama also, that the plaintiffs were in fact contesting the suit upto 1998. Thereafter, both the parties were absent on various occasions. As averred even the Court was vacant during the period from 21st July,1999 to 1st October, 1999. Thereafter, also parties were absent, even on the date of dismissed of the suits in default i.e. on 11/1/2000.

3. The second aspect which is also material in the facts and circumstances of the case is that plaintiff No.1 is only male Karta member of the family and others were female members including wife and daughters. The medical certificate placed on record was also not considered

by the Court below, as the plaintiffs was seek or unwell in the earlier period also as referred in the said medical certificate dated 13/12/2000. The fact is still remained and same need to be considered while granting discretionary relief of restoration of suit, that whether the parties were diligent or negligent in pursuing their remedies. In the present case, after considering rival contentions and looking to the facts and circumstances, including medical certificate, it cannot be said that the plaintiffs were deliberately not taking steps in the matters. In view of the material on record, I am of the view that this is a fit case, where the Court should have allowed the application for restoration of the suits. Taking all this into account, the impugned order dated 25/9/2002 in Misc. Civil Appeal Nos. 276/2001 and 227/2001 is quashed and set aside. The application for restoration as filed by the plaintiffs

are allowed. The Reg. Civil Suit No.1594/1996 and Reg. Civil Suit No. 1674/1996 are restored to the file, subject to the condition of depositing Rs. 2000/- within two weeks in the trial Court, as a condition precedent. The writ petitions are disposed of accordingly.

(ANOOP V.MOHTA,J.]